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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
KAHELIN, MICHAEL WILLIAM	

ART UNIT	PAPER NUMBER
3762	

MAIL DATE	DELIVERY MODE
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 4/30/2008 have been fully considered but they are not persuasive. Applicant argued that Kroll (US 6,282,444) fails to disclose the claimed invention because the assertion that Kroll's lead is capable of implantation non-intrathoracically is mere speculation and unsupported. However, please see MPEP 2114: A claim containing a 'recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus' if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd. Pat. App. & Inter. 1987). As Applicant is yet to indicate a structural feature that would differentiate the claimed subject matter from Kroll, the Examiner maintains the position that a *prima facie* case of anticipation has been made due to the prior art's size and materials that are conducive to the intended use of implantation in a non-thoracic subcutaneous location. See also MPEP 2112.01 (noting that "When the PTO shows a sound basis for believing that the products of the applicant and the prior art are the same, the applicant has the burden of showing that they are not." In re Spada, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (Fed. Cir. 1990)).

2. Applicant further argued that Kroll's disclosure of biocide surrounding a device is not necessarily along at least a longitudinal portion of an exterior surface of a lead body. However, Kroll not only discloses that the biocide is "surrounding the cardiac stimulation device," but is also "at the site of implantation" (col. 11, ll. 65-67). The Examiner asserts

that this is an inherent disclosure of the claimed subject matter because the biocide necessarily contacts the device if it surrounds the device at the site of implantation. As Applicant also concedes that "the biocide surrounds the device (not just the can)," this disclosure also meets the limitations of claim 1 drawn to a lead body. See "Remarks/Arguments," 4/30/2008, page 15.

3. In response to Applicant's arguments with respect to Darvish's drug-eluting linear electrode, the Examiner maintains the arguments of 3/25/2008, namely that the electrode must traverse some longitudinal portion.

4. Applicant further argued that Kroll is not a phoresis device because there is no disclosure of influence by an electrical gradient. However, the term phoresis is explicitly not limited to electrophoresis, evidenced by Applicant's claims, which include "sonophoresis" and "electrophoresis." Further, Kroll's invention comprises a driving arrangement in the form of a concentration gradient that drives the drug into the tissue.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL KAHELIN whose telephone number is (571)272-8688. The examiner can normally be reached on M-F, 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/George R Evanisko/
Primary Examiner, Art Unit 3762

/Michael Kahelin/
Examiner, Art Unit 3762